

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY SMITH,

Plaintiff,

v.

CONNIE GIPSON, et al.,

Defendants.

No. 2:20-CV-0071-DAD-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Defendants' unopposed motion for summary judgment. See ECF No. 56.

The Federal Rules of Civil Procedure provide for summary judgment or summary adjudication when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The standard for summary judgment and summary adjudication is the same. See Fed. R. Civ. P. 56(a), 56(c); see also *Mora v. ChemTronics*, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998). One of the principal purposes of Rule 56 is to dispose of factually unsupported claims or defenses. See

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1       Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Under summary judgment practice, the  
2 moving party

3               . . . always bears the initial responsibility of informing the district court of  
4 the basis for its motion, and identifying those portions of “the pleadings,  
5 depositions, answers to interrogatories, and admissions on file, together  
with the affidavits, if any,” which it believes demonstrate the absence of a  
genuine issue of material fact.

6               Id., at 323 (quoting former Fed. R. Civ. P. 56(c)); see also Fed. R. Civ. P. 56(c)(1).

7               If the moving party meets its initial responsibility, the burden then shifts to the  
8 opposing party to establish that a genuine issue as to any material fact actually does exist. See  
9 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
10 establish the existence of this factual dispute, the opposing party may not rely upon the  
11 allegations or denials of its pleadings but is required to tender evidence of specific facts in the  
12 form of affidavits, and/or admissible discovery material, in support of its contention that the  
13 dispute exists. See Fed. R. Civ. P. 56(c)(1); see also Matsushita, 475 U.S. at 586 n.11. The  
14 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might  
15 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.  
16 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th  
17 Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could  
18 return a verdict for the nonmoving party, Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436  
19 (9th Cir. 1987). To demonstrate that an issue is genuine, the opposing party “must do more than  
20 simply show that there is some metaphysical doubt as to the material facts. . . . Where the record  
21 taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no  
22 ‘genuine issue for trial.’” Matsushita, 475 U.S. at 587 (citation omitted). It is sufficient that “the  
23 claimed factual dispute be shown to require a trier of fact to resolve the parties’ differing versions  
24 of the truth at trial.” T.W. Elec. Serv., 809 F.2d at 631.

25               In resolving the summary judgment motion, the court examines the pleadings,  
26 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.  
27 See Fed. R. Civ. P. 56(c). The evidence of the opposing party is to be believed, see Anderson,  
28 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the

1 court must be drawn in favor of the opposing party, see Matsushita, 475 U.S. at 587.  
 2 Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to  
 3 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen  
 4 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir.  
 5 1987). Ultimately, “[b]efore the evidence is left to the jury, there is a preliminary question for the  
 6 judge, not whether there is literally no evidence, but whether there is any upon which a jury could  
 7 properly proceed to find a verdict for the party producing it, upon whom the onus of proof is  
 8 imposed.” Anderson, 477 U.S. at 251.

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## 10 I. BACKGROUND

### 11 A. Plaintiff's Allegations

12 This action currently proceeds on Plaintiff's first amended complaint on Plaintiff's  
 13 claims that Defendants thwarted the free exercise of his religion. See ECF No. 30; see also ECF  
 14 No. 31. As Defendants' motion for summary judgment is unopposed, the Court accepts  
 15 Defendants' summary of Plaintiff's allegations as follows:

16 Plaintiff alleges Defendants violated his right under Religious  
 17 Land Use and Institutionalized Persons Act (RLUIPA). (First Amended  
 18 Complaint (FAC) (ECF No. 30) at 3.) Specifically, Plaintiff contends  
 19 Defendants reduced his RLUIPA right to a privilege because they created  
 20 regulations that restricted him from possessing and using certain items  
 21 necessary for his religious belief in Thelema. (*Id.*) These items are  
 22 colognes, perfumes, incense sticks, tobacco products, rolling papers,  
 23 lighters and matches, and different colored charm bags. (*Id.*) Plaintiff  
 24 claims he needs to have religious oils, perfumes, and colognes in sixteen  
 25 fluid ounces per each order, from vendors of his choice, in his cell. (*Id.*) Plaintiff  
 26 also asserts he must have three to five pounds of loose tobacco,  
 27 rolling papers, a pipe, and matches or lighters each month from vendors of  
 28 his choice, and keep said items in his cell to practice a “wheel of love”  
 ceremony. (*Id.*) According to Plaintiff, he must smoke the loose tobacco in  
 his pipe to perform the ceremony. (*Id.*) Plaintiff further argues Defendants  
 created and enforced regulations that required him to purchase his  
 religious items from departmentally approved vendors, none of which sell  
 the religious items he wants. (*Id.* at 4.)

Plaintiff seeks injunctive relief to be able to possess and use  
 sixteen fluid ounces of religious oils, perfumes, and colognes per each  
 order, three to five pounds of tobacco products, 300 to 500 rolling papers  
 each order every thirty days, and matches. (Compl. at 6.) Plaintiff also  
 seeks to purchase said items from vendors of his choice and possess the  
 items in his cell for religious use. (*Id.*) Plaintiff also asks to get an  
 exemption for religious artifacts “similar to those granted to other inmates

1           in CDCR custody,” without specifying what such exemptions entail. (*Id.*)

2           ECF No. 56-1, pg. 8.

3           **B. The Parties' Evidence**

4           Defendants' motion for summary judgment is supported by a separate statement of  
 5 undisputed facts, ECF No. 56-2, the declaration of defense counsel Theodore Lee, Esq., and  
 6 attached exhibits, ECF No. 56-3, the declaration of C. Richey and attached exhibits, ECF No. 56-  
 7 4, the declaration of J. Guevara, ECF No. 56-5, and the transcript of Plaintiff's deposition, which  
 8 has been lodged with the Court. Plaintiff has not filed an opposition, though the Court has  
 9 considered Plaintiff's verified TAC as his declaration. The Court accepts Defendants' statement  
 10 of undisputed facts, which Plaintiff does not challenge:

11           California state prisoners may not possess or use tobacco products.  
 12 Cal. Penal Code (Penal Code) § 5030.1(a). However, an exemption is  
 13 possible for departmentally approved religious ceremonies. *Id.* The  
 14 California Department of Corrections and Rehabilitation (CDCR) enforces  
 15 this statute by prohibiting any possession or use of tobacco products “on  
 16 the grounds of any institution/facility that houses or detains inmates.” Cal.  
 17 Code Regs. tit. 15 (Title 15), § 3188(c).

18           CDCR has the discretion to permit inmates' use of tobacco products in  
 19 departmentally approved inmate religious ceremonies. *Id.*, § 3188(c)(1).

20           California state prisoners may possess and use personal religious  
 21 properties purchased from departmentally or locally approved vendors.  
 22 Title 15, § 3190(b), (k)(4). Specifically, the Religious Personal Property  
 23 Matrix (RPPM) lists all items that state prisoners may purchase, possess,  
 24 or use. *Id.*, § 3190(b).

25           Each institution's warden must “make every reasonable effort to  
 26 provide for the religious and spiritual welfare of all interested inmates . . . .” Title 15, § 3210(a). Institutions may provide accommodations for  
 27 religious services that are “in keeping with facility security and other  
 necessary institutional operations and activities.” *Id.* § 3210(c). “A request  
 for a religious service accommodation that requires a specific time,  
 location and/or item(s) not otherwise authorized, will be referred to a  
 Religious Review Committee (RRC) for review and consideration.” *Id.* §  
 28 3210(d). “Accommodation for religious services that are not granted, shall  
 be for reason(s) which would impact facility/unit safety and security, and  
 orderly day to day operations of the institution.” *Id.*

29           If the Penal Code or Title 15 proscribes a religious exercise,  
 30 inmates may request approval to engage in said exercise by submitting a  
 31 CDCR Form 3067 to their respective housing institution's RRC. (See  
 32 Declaration of C. Richey (Richey Decl.) ¶ 8, Exhibit 2.) The RRC also  
 33 reviews custody staff's recommendation to disapprove requested religious  
 34 items. (*Id.* ¶ 7.) After its review, the RRC forwards its recommendation to  
 35 the Statewide Religious Review Committee (SRRC) using a CDCR Form  
 36 2279. (*Id.*, Exhibit 1.)

37           ///

At the SRRC, a subcommittee comprised of a warden, community resource manager, and legal counsel will review the RRC's recommendation. (Richey Decl. ¶ 12.) The full SRRC will then deliberate and vote on the recommendation for a final decision. (*Id.*) "SRRC's review and approval process does not differ based on the nature or identity of the requesting religious, faith, or spiritual group or belief." (*Id.* ¶ 13). "The process also does not take into account the requesting inmates' personal identifying information, such as race, ethnicity, ancestral heritage, nationality, gender, sexuality, age, disability, or others, that are not relevant for its review and approval process." (*Id.*)

Plaintiff claims to hold a religious belief in Thelema since 2018. (FAC at 18.) CDCR form 2279 form has been available to all CDCR inmates at their respective housing institutions since December 2014. (Richey Decl. ¶ 7.) CDCR form 3067 is available through each CDCR facility's chaplains and community resources manager. (*Id.* ¶ 8.)

In May 2021, Plaintiff resided at California Health Care Facility (CHCF). (FAC at 1, 6; Declaration of J. Guevara (Guevara Decl.) ¶ 5.) During his time at CHCF, Plaintiff never sought any religious accommodations to practice his religion, despite being able to do so. (Guevara Decl. ¶¶ 4–5, 7.) Had Plaintiff sought an accommodation, CHCF RRC would have reviewed the request in good faith to determine whether to approve the request. (*Id.* ¶ 6.) Similarly, no record at the headquarters level show Plaintiff ever submitted requests for religious accommodation to either an RRC or the SRRC. (Richey Decl. ¶ 11.)

Plaintiff never made efforts to learn about the available means to seek religious accommodations. (Declaration of Theodore Lee Exhibit 1 (Deposition Transcript of Plaintiff (Depo.)) at 49–58.) No prison staff prevented Plaintiff from seeking help to get items for his religious practices, nor did they interfere with Plaintiff's ability to seek help. (Depo. at 57–58.)

ECF No. 56-1, pgs. 9-11.

## II. DISCUSSION

In their motion for summary judgment, Defendants argue that Plaintiff cannot state a claim against them under RLUIPA. See ECF No. 56-1. Defendants also argue that, even if Plaintiff does state a claim, the undisputed facts show that Plaintiff cannot prevail. See id.

The United States Supreme Court has held that prisoners retain their First Amendment rights, including the right to free exercise of religion. See O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987); see also Pell v. Procunier, 417 U.S. 817, 822 (1974). Thus, for example, prisoners have a right to be provided with food sufficient to sustain them in good health and which satisfies the dietary laws of their religion. See McElyea v. Babbit, 833 F.2d 196, 198 (9th Cir. 1987). In addition, prison officials are required to provide prisoners facilities

1 where they can worship and access to clergy or spiritual leaders. See Glittlemacker v. Prasse, 428  
 2 F.2d 1, 4 (3rd Cir. 1970). Officials are not, however, required to supply clergy at state expense.  
 3 See id. Inmates also must be given a “reasonable opportunity” to pursue their faith comparable to  
 4 that afforded fellow prisoners who adhere to conventional religious precepts. See Cruz v. Beto,  
 5 405 U.S. 319, 322 (1972).

6                 However, the court has also recognized that limitations on a prisoner’s free  
 7 exercise rights arise from both the fact of incarceration and valid penological objectives. See  
 8 McElyea, 833 F.2d at 197. For instance, under the First Amendment, the penological interest in a  
 9 simplified food service has been held sufficient to allow a prison to provide orthodox Jewish  
 10 inmates with a pork-free diet instead of a completely kosher diet. See Ward v. Walsh, 1 F.3d 873,  
 11 877-79 (9th Cir. 1993). Similarly, prison officials have a legitimate penological interest in getting  
 12 inmates to their work and educational assignments. See Mayweathers v. Newland, 258 F.3d 930,  
 13 38 (9th Cir. 2001) (analyzing Muslim inmates’ First Amendment challenge to prison work rule).

14                 While free exercise of religion claims originally arose under the First Amendment,  
 15 Congress has enacted various statutes in an effort to provide prisoners with heightened religious  
 16 protection. See Warsoldier v. Woodford, 418 F.3d 989, 994 (9th Cir. 2005). Prior to these  
 17 congressional efforts, prison free exercise claims were analyzed under the “reasonableness test”  
 18 set forth in Turner v. Safley, 482 U.S. 78, 89-91 (1987); see e.g. O’Lone, 382 U.S. at 349. The  
 19 first effort to provide heightened protection was the Religious Freedom Restoration Act (RFRA)  
 20 of 1993. However, the Supreme Court invalidated that act and restored the “reasonableness test.”  
 21 See City of Boerne v. P.F. Flores, 521 U.S. 507 (1997); see also Freeman v. Arpaio, 125 F.3d  
 22 732, 736 (9th Cir. 1997) (recognizing that the United States Supreme Court’s decision in City of  
 23 Boerne invalidated RFRA and restored the “reasonableness test” as the applicable standard in free  
 24 exercise challenges brought by prison inmates).

25                 Congress then enacted the Religious Land Use and Institutionalized Persons Act  
 26 (RLUIPA) in 2000 “. . . in response to the constitutional flaws with RFRA identified in City of  
 27 Boerne.” Guru Nanak Sikh Soc. of Yuba City v. County of Sutter, 456 F.3d 978, 985 (9th Cir.  
 28 2006). Under RLUIPA, prison officials are prohibited from imposing “substantial burdens” on

1 religious exercise unless there exists a compelling governmental interest and the burden is the  
 2 least restrictive means of satisfying that interest. See id. at 986. RLUIPA has been upheld by the  
 3 Supreme Court, which held that RLUIPA’s “institutionalized-persons provision was compatible  
 4 with the Court’s Establishment Clause jurisprudence and concluded that RLUIPA ‘alleviates  
 5 exceptional government-created burdens on private religious exercise.’” Warsoldier, 418 F.3d at  
 6 994 (quoting Cutter v. Wilkinson, 125 S.Ct. 2113, 2117 (2005)). Congress achieved this goal by  
 7 replacing the “reasonableness test” articulated in Turner with the “compelling government  
 8 interest” test codified in RLUIPA at 42 U.S.C. § 2000cc-1(a). See id.

9           It is not clear whether a prisoner must specifically raise RLUIPA in order to have  
 10 his claim analyzed under the statute’s heightened standard. In Alvarez v. Hill, the Ninth Circuit  
 11 held that, if a complaint contains “factual allegations establishing a ‘plausible’ entitlement to  
 12 relief under RLUIPA, [plaintiff has] satisfied the minimal notice pleading requirements of Rule 8  
 13 of the Federal Rules of Civil Procedure.” 518 F.3d 1152, 1157 (9th Cir. 2008); but see  
 14 Henderson v. Terhune, 379 F.3d 709, 715 n.1 (9th Cir. 2004) (declining to express any opinion  
 15 about whether plaintiff could prevail under RLUIPA because plaintiff brought his claim under the  
 16 First Amendment only). Therefore, it is possible for a prisoner’s complaint to raise both a First  
 17 Amendment claim and RLUIPA claim based on the same factual allegations. In other words,  
 18 even if the plaintiff does not specifically invoke the heightened protections of RLUIPA, he may  
 19 nonetheless be entitled to them. Under Henderson, however, the plaintiff’s claim may be limited  
 20 to the less stringent Turner “reasonableness test” if the plaintiff specifically brings the claim  
 21 under the First Amendment only.

22           Under both the First Amendment and RLUIPA, the prisoner bears the initial  
 23 burden of establishing that the defendants substantially burdened the practice of his religion by  
 24 preventing him from engaging in conduct mandated by his faith. See Freeman v. Arpaio, 125 F.3d  
 25 732, 736 (9th Cir. 1997) (analyzing claim under First Amendment); see also Warsoldier, 418 F.3d  
 26 at 994-95 (analyzing claim under RLUIPA). While RLUIPA does not define what constitutes a  
 27 “substantial burden,” pre-RLUIPA cases are instructive. See id. at 995 (discussing cases defining  
 28 “substantial burden” in the First Amendment context). To show a substantial burden on the

1 practice of religion, the prisoner must demonstrate that prison officials' conduct " . . . burdens  
2 the adherent's practice of his or her religion by pressuring him or her to commit an act forbidden  
3 by the religion or by preventing him or her from engaging in conduct or having a religious  
4 experience which the faith mandates." Graham v. Commissioner, 822 F.2d 844, 850-51 (9th Cir.  
5 1987). The burden must be more than a mere inconvenience. See id. at 851. In the context of  
6 claims based on religious diets, a plaintiff must prove that prison officials refused to provide a  
7 diet which satisfies his religious dietary laws or that the available prison menu prevented him  
8 from adhering to the religious dietary laws mandated by his faith. See Bryant v. Gomez, 46 F.3d  
9 948, 949 (9th Cir. 1995).

10 Under the First Amendment "reasonableness test," where the inmate shows a  
11 substantial burden the prison regulation or restriction at issue is nonetheless valid if it is  
12 reasonably related to a legitimate penological interest. See Shakur v. Schriro, 514 F.3d 878, 884  
13 (9th Cir. 2008) (citing Turner, 482 U.S. at 89). In applying this test, the court must weight four  
14 factors: (1) whether there is a rational connection between the regulation or restriction and the  
15 government interest put forward to justify it; (2) whether there are available alternative means of  
16 exercising the right; (3) whether accommodation of the asserted religious right will have a  
17 detrimental impact on prison guards, other inmates, or the allocation of limited prison resources;  
18 and (4) whether there exist ready alternatives to the regulation or restriction. See id.; see also  
19 Allen v. Toombs, 827 F.2d 563, 567 (9th Cir. 1987).

20 Under RLUIPA, the government is required to ". . . meet the much stricter burden  
21 of showing that the burden it imposes on religious exercise is 'in furtherance of a compelling  
22 government interest; and is the least restrictive means of furthering that compelling governmental  
23 interest.'" Green v. Solano County Jail, 513 F.3d 992, 986, 989 (9th Cir. 2008) (citing 42 U.S.C.  
24 § 2000cc-1(a)(1)-(2) and 2(b)); see also Warsoldier, 418 F.3d at 994-95. Prison security is an  
25 example of a compelling governmental interest. See Green, 513 F.3d at 989 (citing Cutter, 125  
26 S.Ct. at 2113 n.13). In establishing that the regulation or restriction is the least restrictive means  
27 to achieve a compelling governmental interest, prison officials must show that they actually  
28 considered and rejected the efficacy of less restrictive means before adopting the challenged

1 practice. See Green, 513 F.3d at 989 (citing Warsoldier, 418 F.3d at 999).

2 Here, Defendants first argue that Plaintiff cannot state a valid RLUIPA claim  
3 because the undisputed evidence shows that Defendants never substantially burdened Plaintiff's  
4 religious practice. See ECF No. 56-1, pgs. 12-14. Second, Defendants argue that, even if  
5 Plaintiff has stated a RLUIPA claim, he cannot prevail because Defendants' conduct further  
6 compelling state interests by the least restrictive means. See id. at 14-19.

7 Citing portions of Plaintiff's deposition testimony, Defendants initially note that  
8 Plaintiff has not practiced Thelema for the past two years. See ECF No. 56-1, pg. 13, n.3.  
9 According to Defendants:

10 Plaintiff has not practiced Thelema for the past two years, during  
11 which he did not consider it at all important. (Depo. at 25–26, 33, 58).  
12 Plaintiff's deposition testimony casts doubt on his previously professed  
13 sincerely held religious belief (*compare* Depo. at 25–26, *with* FAC at 17).  
14 Plaintiff's knowledge, familiarity, and command on Thelema is feeble at  
15 best. (*See, e.g.*, Depo. at 22–23, 25–27, 32, 35–36, 58–60.)

16 ECF No. 56-1, pg. 13, n.3.

17 To avoid unnecessary briefing on whether Plaintiff had a sincerely held religious  
18 belief in Thelema, Defendants "neither dispute nor concede that Plaintiff has a sincerely held  
19 religious belief in Thelema or its religious exercises." Id. The Court will, therefore, presume for  
20 purposes of this analysis that Plaintiff held sincere beliefs in Thelema and focus on the evidence  
21 relating to whether Defendants substantially burdened Plaintiff's practice of Thelema.

22 First, Defendants contend that the undisputed evidence shows that Plaintiff could  
23 have sought and secured accommodations or exemptions relating to his practice of Thelema. See  
24 id. at 13. Second, Defendants contend that they did not "make requesting and obtaining religious  
25 accommodations impossible or practically futile for Plaintiff." Id. Third, Defendants assert that,  
26 because the applicable statutes and regulations applied to all inmates irrespective of their religious  
27 beliefs or practices, Defendants "had no reason to pressure Plaintiff to act in ways that violated  
28 his religious or make Plaintiff modify his behavior." Id. at 14. Fourth, Defendants argue that  
there is no substantial burden traceable to them for the simple reason that Plaintiff never sought  
religious accommodations or exemptions. See id.

1                   The Court finds Defendants' fourth argument dispositive. According to  
2 Defendants:

3                   There is no substantial burden traceable to Defendants for another  
4 reason. Plaintiff did not seek available religious exemptions or  
5 accommodations. (Depo. at 49–58; *see also* Richey Decl. ¶ 7, Exhibit 1.)  
6 Plaintiff chose not to, despite facing no challenges to do so. (E.g., Depo. at  
7 57–58.) Most importantly, Plaintiff opted to rely on a fellow inmate—  
8 Tracy Taylor—to secure religious accommodations. [footnote 4] (Depo. at  
9 44, 46, 49–51, 54, 56–58.) Whatever substantial burden Plaintiff endured,  
10 it stemmed directly from his decisions alone. Because Plaintiff cannot  
11 show that Defendants substantially burdened his religious exercise, his  
12 federal claims are invalid.

13                   ECF No. 56-1, pg. 14.

14                   At footnote 4, Defendants add:

15                   Taylor has largely dictated Plaintiff's Thelema beliefs and  
16 practices; for example, Plaintiff considers Taylor his spiritual leader, along  
17 with accepting and adopting whatever Thelema teaching or representation  
18 Taylor provides, despite Taylor occupying no formal Thelema leadership  
19 position. (*See* Depo. at 16–24, 27, 32, 41–45.)

20                   ECF No. 56-1, pg. 14, n.4.

21                   Defendants cite to Plaintiff's August 31, 2022, deposition testimony. See ECF No.  
22 56-3 (Lee declaration); see also lodged deposition transcript. Defendants' citations are  
23 persuasive. Plaintiff testified that Mr. Taylor, a fellow inmate, was Plaintiff's "spiritual advisor."  
24 As to requests for accommodation, Plaintiff further testified that he assumed Taylor was handling  
25 it and admitted that he personally did not follow up. Plaintiff also testified that he never reached  
26 out to any chaplain at the prison to ask for help in getting items he wanted for practice of  
27 Thelema. According to Plaintiff, no correctional staff ever told him that he could not ask a  
28 chaplain for assistance with religious accommodations. Additionally, Plaintiff testified that he  
believes Defendants are liable for denying his inmate grievance concerning accommodations.

29                   Based on Plaintiff's testimony, which Plaintiff has not contested, it is undisputed  
30 that whatever problems Plaintiff faced with respect to the practice of Thelema were of his own  
31 making by relying on another inmate and not personally following up on any request for  
32 accommodation. Further, Defendants cannot be held liable simply by virtue of their participation  
33 in the inmate grievance process. See Smith v. Calderon, 1999 WL 1051947 (N.D. Cal 1999)

1 (finding that failure to properly process grievances did not violate any constitutional right); Cage  
 2 v. Cambra, 1996 WL 506863 (N.D. Cal. 1996) (concluding that prison officials' failure to  
 3 properly process and address grievances does not support constitutional claim); James v. U.S.  
 4 Marshal's Service, 1995 WL 29580 (N.D. Cal. 1995) (dismissing complaint without leave to  
 5 amend because failure to process a grievance did not implicate a protected liberty interest);  
 6 Murray v. Marshall, 1994 WL 245967 (N.D. Cal. 1994) (concluding that prisoner's claim that  
 7 grievance process failed to function properly failed to state a claim under § 1983).

8 Put simply, the undisputed evidence fails to establish a causal connection between  
 9 Defendants – who are high-level supervisory personnel – and a RLUIPA violation. To prevail on  
 10 a claim under 42 U.S.C. § 1983, the plaintiff must establish an actual connection or link between  
 11 the actions of the named defendants and the alleged deprivations. See Monell v. Dep't of Social  
 12 Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). Supervisory personnel are  
 13 generally not liable under § 1983 for the actions of their employees. See Taylor v. List, 880 F.2d  
 14 1040, 1045 (9th Cir. 1989) (holding that there is no respondeat superior liability under § 1983).  
 15 A supervisor is only liable for the constitutional violations of subordinates if the supervisor  
 16 participated in or directed the violations. See id. The Supreme Court has rejected the notion that  
 17 a supervisory defendant can be liable based on knowledge and acquiescence in a subordinate's  
 18 unconstitutional conduct because government officials, regardless of their title, can only be held  
 19 liable under § 1983 for his or her own conduct and not the conduct of others. See Ashcroft v.  
 20 Iqbal, 556 U.S. 662, 676 (2009). When a defendant holds a supervisory position, the causal link  
 21 between such defendant and the claimed constitutional violation must be specifically established.  
 22 See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441  
 23 (9th Cir. 1978).

24 As discussed above, the undisputed evidence shows that Plaintiff cannot establish  
 25 a causal link between the named defendants and a violation of RLUIPA because Defendants'  
 26 involvement as supervisory personnel extended no further than review of Plaintiff's inmate  
 27 grievance. For this reason alone, Defendants are entitled to summary judgment in their favor as a  
 28 matter of law.

1           In their motion for summary judgment, Defendants seek leave to file supplemental  
2 briefing as to any cognizable state law claims. See ECF No. 56-1, pg. 12, n.2. Supplemental  
3 briefing is unnecessary. Given that Plaintiff cannot prevail on his federal claim, the Court should  
4 decline to exercise supplemental jurisdiction over any state law claims.

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### 6           **III. CONCLUSION**

7           Based on the foregoing, the undersigned recommends that Defendants' unopposed  
8 motion for summary judgment, ECF No. 56, be GRANTED as to Plaintiff's RLUIPA claim and  
9 that the Court DECLINE to exercise supplemental jurisdiction over any state law claims.

10           These findings and recommendations are submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
12 after being served with these findings and recommendations, any party may file written objections  
13 with the Court. Responses to objections shall be filed within 14 days after service of objections.  
14 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.  
15 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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17           Dated: March 7, 2024



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18           DENNIS M. COTA  
19           UNITED STATES MAGISTRATE JUDGE

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